

## NATIONAL ARCHIVES

### IRELAND



**Reference Code:** 2004/21/215

**Title:** Note prepared by D Quigley, legal assistant in the Office of the Attorney General, concerning the law governing extradition of prisoners from the Republic of Ireland to Northern Ireland.

**Creation Date(s):** 5 December, 1973

**Level of description:** Item

**Extent and medium:** 3 pages

**Creator(s):** Department of the Taoiseach

**Access Conditions:** Open

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Regulation  
 10/12

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Note on Extradition

1. From 1851 until 1963 the return of offenders from Ireland to Britain had been achieved by the backing and execution here by Irish Police of Warrants issued in Britain. In 1963 this was declared by the Supreme Court to be unconstitutional in the Quinn case [1965 I.R. p.70]. Any person arrested on such a warrant must have full and free access to the Courts here before leaving the jurisdiction was the effect of the judgment of the Court.
2. In the Extradition Act, 1965 (which made law of the Council of Europe Convention on Extradition in Part II of the Act) a special provision was made in Part III for the endorsement and execution here of warrants issued in Britain. The provisions of this part provide for access to the Courts and in many ways are similar to the provisions relating to extradition. In particular Part III provides that an arrested person shall be released if the High Court or the Minister for Justice so directs on the grounds, inter alia, that the offence is a political offence or an offence connected with a political offence. (Sections 44 and 50 of the Act.)
3. The provision excepting political offences from extradition is contained in extradition agreements since the mid nineteenth century. Prior to that it was usually referred to as political asylum and has become a universally accepted part of extradition treaties amongst civilised nations. As an indication of how deep-rooted it is, many conferences have tried to have some inroads made on the principle for the crime of high-jacking of aircraft : all have failed.
4. The provision permitting free access to the Courts has caused very considerable delays. The law's delays are notorious but in extradition cases there were additional

factors which added to them, to wit:-

- (a) The procedure, initially, was by way of plenary summons which required a full sequence of pleadings with, regularly, applications for extension of time.
- (b) The applicants were anxious to cause delays and used all legal 'arts and crafts' to achieve this.
- (c) The absence of a High Court judge on the Special Court added to the normal delays.

After a High Court decision there follows the inevitable appeal to the Supreme Court with more delays.

5. To help improve the delay position the Rules of Court were changed in July last to provide for procedure by way of special summons. This has speeded matters considerably.
6. In many cases, in addition to applications under section 50 actions have been brought pleading that the extradition procedure is unconstitutional. Constitutional cases are, of their nature, long-drawn-out in that vast areas of constitutional law, including constitutional law in other countries, is debated.
7. On the question of implementing the Extradition Act, both Part II and Part III, our Courts have adopted a very narrow approach in general. It is little exaggeration to say that the effect of the Supreme Court decision in the Furlong case is that an offence abroad will not be considered an offence "corresponding with an offence" in this State unless it is identical in its ingredients.
8. With regard to political offences, our Courts, in the Bourke case, showed that they favour a very liberal interpretation. In general it would appear clear that persons required for extradition to Northern Ireland for terrorist, firearms or explosives type offences would be held by our Courts to be required for political offences. Indeed it would also appear that in so finding our Courts would be quite correct in law.

9. The position with regard to warrants from Northern Ireland is as follows:--

From 1 July 1971 to 4 December 1973

- 60 persons sought
  - 7 extradited
  - 15 before High Court
    - 2 " Attorney General
    - 5 on hand (3 not yet located; one being charged here; one serving sentence here)
    - 7 no corresponding offence here
    - 1 dismissed in District Court and not renewed
  - 10 persons arrested in Northern Ireland or England
    - 6 not located, believed not here
    - 1 person died
    - 1 pending in District Court
    - 1 " " Supreme Court
    - 1 dismissed in High Court
    - 2 Bad order in District Court -- up for quashing and re-issue
    - 1 person shot in Belfast.
10. The Department of Justice has been in regular touch with the Home Office in London trying to meet the problems raised by our Courts. On June 29th of this year following the advice of the Attorney General a full and detailed minute was sent by the Department of Justice to the Criminal Department of the Home Office with a view to having the suggested means of meeting the difficulties circularised to the police in Britain and to the R.U.C.
11. It should be borne in mind however that the sending of any person outside this State must involve giving such a person full and free access to the Courts here. This will inevitably cause serious delays particularly when the person having access to the Courts will try by every possible legal manoeuvre to have as much delay as possible.